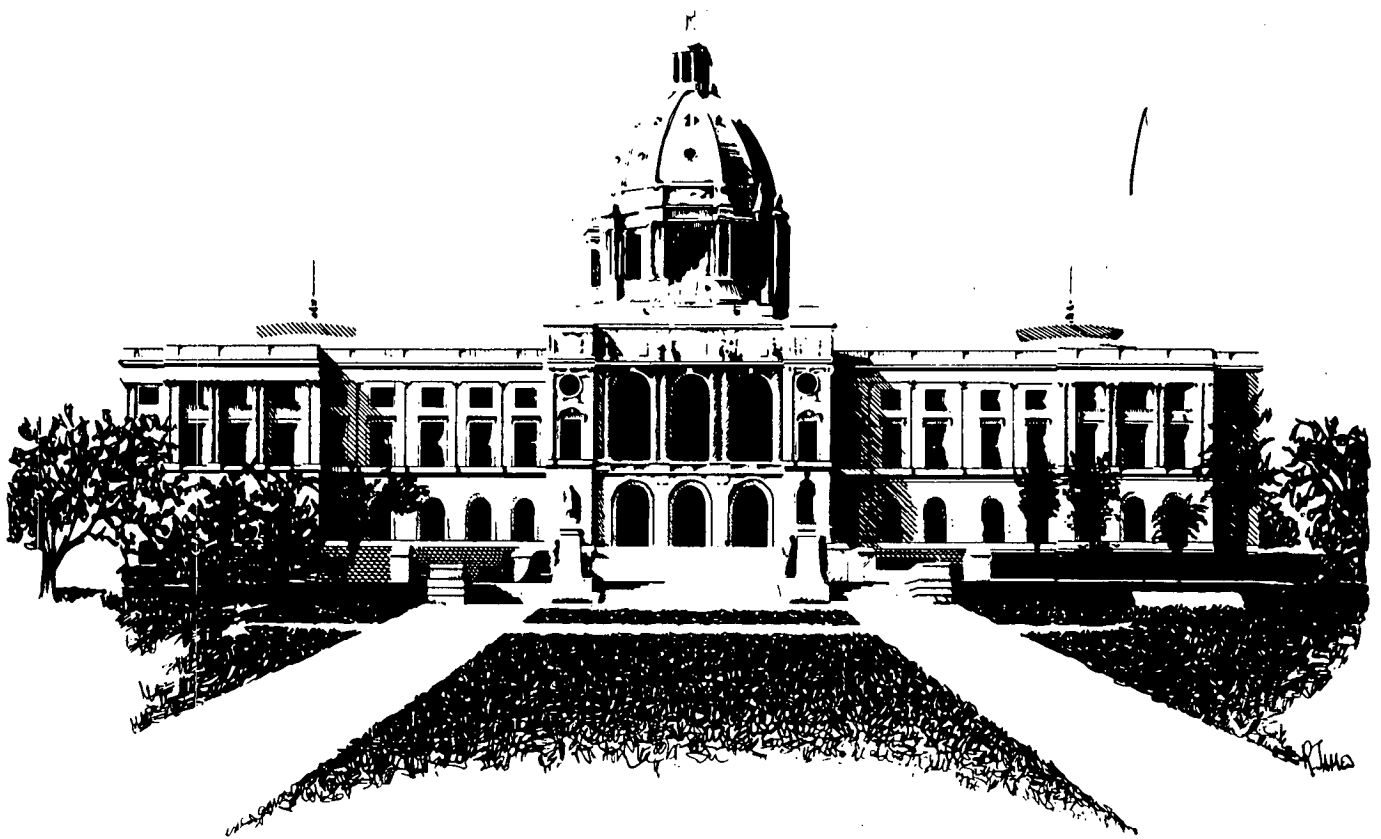


84 Feb. 13

# STATE REGISTER

STATE OF MINNESOTA



**VOLUME 8, NUMBER 33**

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### Printing Schedule for Agencies

| Issue Number                 | *Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules | *Submission deadline for State Contract Notices and other **Official Notices | Issue Date    |
|------------------------------|---|--|---------------|
| <b>SCHEDULE FOR VOLUME 8</b> |   |  |               |
| 34                           | Monday Feb 6  | Monday Feb 13  | Monday Feb 20 |
| 35                           | Monday Feb 13   | Monday Feb 20  | Monday Feb 27 |
| 36                           | Monday Feb 20   | Monday Feb 27  | Monday Mar 5  |
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\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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#### The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

#### The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive  
Issues 14-25, inclusive  
Issue 26, cumulative for 1-26  
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**ADOPTED RULES**

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

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**Department of Agriculture  
Office of the Commissioner****Adopted Temporary Rules Governing Administration of Agricultural Development Grants**

The temporary rules proposed and published at *State Register*, Volume 8, Number 16, pages 665-670, October 17, 1983 (8 S.R. 665) are adopted with the following modifications:

**Temporary Rules as Adopted**

3 MCAR § 1.4062 [Temporary] General terms and conditions of grants.

A. Grant ratio. A grant made by the commissioner may not exceed 75 percent of the total cost of the grant project. The grantee must contribute ~~in cash~~ at least ~~12.5~~ 25 percent of the total project cost, ~~and the remaining portion of the grantee's contribution may be~~ in the form of cash or contributed goods and services.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## **ADOPTED RULES**

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D. Application deadline. ~~For the fiscal year ending June 30, 1984, The commissioner shall establish an application deadline is 60 days after the effective date of 3 MCAR §§ 1.4060-1.4070 [Temporary]. Thereafter, the application deadline is 90 days preceding the start of the for each fiscal year. Based on availability of funds, the commissioner may accept grant applications at other times during the fiscal year and publish notice of the deadline in the *State Register*.~~

### **3 MCAR § 1.4067 [Temporary] Extensions.**

The grantee must make a written request for an extension of the contract no later than 60 days prior to the termination date explaining the reasons an extension is needed. The commissioner may grant an extension up to six months if necessary for successful completion of the grant project and realization of grant objectives. As a condition of the contract extension, the commissioner may modify the terms of the contract.

### **3 MCAR § 1.4068 [Temporary] Monitoring and review.**

D. Evaluation. If the commissioner determines through an examination that the grantee has not been complying with the terms of the contract, the commissioner may direct the grantee to adhere to the terms of the contract, may unilaterally modify the terms of the grant contract as necessary to assure that project objectives are met, may terminate the contract, or may seek a legal remedy in a court of competent jurisdiction.

### **3 MCAR § 1.4070 [Temporary] Misrepresentation by applicant or grantee.**

If any grant application, progress report, or final report contains material false or misleading statements or information, the commissioner may take one or more of the following actions, as appropriate: reject the grant application; conduct an examination of the use of grant funds; unilaterally modify the terms of the grant contract as necessary to assure that project objectives are met; terminate the grant contract; or recover grant funds through available legal remedies.

## **Department of Agriculture Minnesota Export Finance Authority**

### **Adopted Rules Governing Financial Assistance for Pre-Export Credit Needs of Minnesota Exporters (3 MCAR §§ 1.0090-1.0100)**

The rules proposed and published at *State Register*, Volume 8, Number 23, pages 1290-1294, December 5, 1983 (8 S.R. 1290) are adopted as proposed.

## **Housing Finance Agency**

### **Extension of Temporary Rules Governing Accessory Apartment Loans**

Notice is hereby given that 12 MCAR §§ 3.058, 3.059, 3.060 and 3.061 (temporary) which governs Accessory Apartment Loans, effective September 1, 1983 and published in the *State Register* as Adopted at Volume 8, Number 13, page 533 are being continued in effect for an additional 180 days. This continuation is in accordance with Chapter 562, 1982 Laws of Minnesota. The new expiration date for 12 MCAR §§ 3.058, 3.059, 3.060 and 3.061 (temporary) will be August 26, 1984 or the date 12 MCAR §§ 3.058, 3.059, 3.060 and 3.061 (temporary) are replaced by permanent rules; whichever date is earlier.

## **Housing Finance Agency**

### **Extension of Temporary Rules Governing Solar Energy and Energy Conservation Bank Programs**

Notice is hereby given that 12 MCAR §§ 3.160, 3.161, 3.162, 3.163, 3.164 and 3.165 (temporary) which governs Solar Energy and Energy Conservation Bank Programs, effective September 2, 1983 and published in the *State Register* as Adopted at Volume 8, Number 13, page 533 are being continued in effect for an additional 180 days. This continuation is in accordance with Chapter 562, 1982 Laws of Minnesota. The new expiration date for 12 MCAR §§ 3.160, 3.161, 3.162, 3.163, 3.164 and 3.165 (temporary) will be August 27, 1984 or the date 12 MCAR §§ 3.160, 3.161, 3.162, 3.163, 3.164 and 3.165 (temporary) are replaced by permanent rules; whichever date is earlier.

## Department of Natural Resources

### Adopted Amendment to Rules Governing Snowmobiles

The rule proposed and published at *State Register*, Volume 8, Number 16, pages 677-678, October 17, 1983 (8 S.R. 677) is adopted as proposed.

## Department of Public Welfare

### Adopted Temporary Rules Governing Medical Assistance Funding for Day Training and Habilitation

The temporary rules proposed and published at *State Register*, Volume 8, Number 20, pages 1154-1162, November 14, 1983 (8 S.R. 1154) are adopted with the following modifications:

#### Temporary Rules as Adopted

##### 12 MCAR § 2.0300 [Temporary] Purpose and applicability.

A. Purpose. Rules 12 MCAR §§ 2.0300-2.0304 [Temporary] establish procedures to ensure adequate reimbursement to approved providers for the efficient and economical provision of quality licensed ~~quality~~ day training and habilitation for eligible persons who reside in intermediate care facilities for mentally retarded persons.

##### 12 MCAR § 2.0302 [Temporary] Basic provisions.

A. Eligible services. Medical assistance funds may be used for day training and habilitation which complies with 12 MCAR §§ 2.0300-2.0304 [Temporary] and:

3. includes:

c. supervision, training and assistance in grooming, ~~training~~, eating, toileting, communicating, socializing, and other activities of daily living;

E. Process for county rate recommendations. The county board shall recommend payment rates to the commissioner for each eligible provider which is identified by a county of financial responsibility to provide day training and habilitation to residents of intermediate care facilities for mentally retarded persons. The following requirements apply to the county board's recommendation:

5. The county board shall submit rate recommendations to the commissioner by ~~December~~ January 1, 1983 1984, for services to begin in January 1984. For services starting after ~~January~~ March 1984 and for revised rates, the county board shall submit rate recommendations to the commissioner at least 60 days before the recommended rates are to be effective.

I. Agreement. Before medical assistance reimbursable service begins, the county board where the residential facility is located shall, for each provider and for each facility whose residents will receive day training and habilitation under 12 MCAR §§ 2.0300-2.0304 [Temporary], submit to the commissioner a day training and habilitation agreement signed by the county board, the provider, and by an authorized representative of the facility whose residents will receive services under the agreement. This agreement must be completed on forms provided by the commissioner, with the exception that the county board may attach an addendum which does not conflict with 12 MCAR §§ 2.0300-2.0304 [Temporary]. The agreement must include:

J. Agreement approval. If the commissioner does not respond in any way within 60 days of receipt of the signed agreement in I., the agreement is deemed to be approved. If the agreement does not comply with I., the commissioner shall, within 60 days of receipt of the signed agreement:

1. deny approval; or

2. grant provisional approval if the parties to the agreement, due to circumstances beyond their control, do not meet all of the requirements in I., but will meet those requirements within ~~30~~ 60 days of the provisional approval.

O. Rate appeal. If a provider disagrees with the rate recommendation of the county board, the provider may appeal to the

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## ADOPTED RULES

county board. If a provider has appealed to the county board and the provider disagrees with the county board's appeal decision, the provider may appeal to the commissioner. If the county board disagrees with a rate decision of the commissioner, the county board may appeal to the commissioner under Minnesota Statutes, chapter 14. Until a rate appeal is resolved and if the provider continues services, payments shall continue at a rate which the commissioner determines to comply with 12 MCAR §§ 2.0300-2.0304 [Temporary]. If a higher rate is approved, the commissioner shall make a retroactive payment as determined in the rate appeal decision.

R. County advances. County boards may make loans or grants to providers developmental achievement centers for use as operating capital to serve clients.

S. Program change or reorganization. Rates established under 12 MCAR §§ 2.0300-2.0304 [Temporary] shall not be affected by changes in ownership or reorganization of the provider. However, if a provider changes more than ~~50~~ 33 1/3 percent of its clientele within one year, the county board may recommend rates for that provider under the rules for new providers, 12 MCAR § 2.0304 [Temporary].

T. Alternative rate structures. The county board may recommend to the commissioner an alternative to the rates required in E.2. and F.4.-6. The commissioner shall approve such an alternative if it:

1. complies with all requirements of 12 MCAR §§ 2.0300-2.0304 [Temporary] other than 12 MCAR § 2.0302 [Temporary] E.2. and F.4.-6.;

2. complies with Laws of Minnesota 1983, chapter 312;

3. results in total annual payments which are equal to or less than the payments which would be made if the rates complied with E. and F.

12 MCAR § 2.0303 [Temporary] Determination of 1983 rates for developmental achievement centers.

A. Duties of county board. The following requirements apply to the county board for developmental achievement centers with contracts in effect during July 1, 1983, to December 31, 1983.

1. The county board shall, by ~~December~~ January 1, 1983 1984, notify the commissioner of the contractual rates in effect on December 1, 1983, for each program.

12 MCAR § 2.0304 [Temporary] Additional requirements for new providers.

C. County and regional limits. To implement Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 6 and 7, the commissioner shall determine the average medical assistance payment rates for day training and habilitation in each county and in each of the regional development commission districts designated in Minnesota Statutes, sections 462.381 to 462.396. ~~To be eligible for the special limit applicable only to new developmental achievement centers under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 6, the developmental achievement center must not subcontract services, except for transportation, to a provider that is not a developmental achievement center.~~

## Department of Public Welfare Support Services Bureau

### Adopted Temporary Rules Governing the Determination of Welfare Payment Rates for all Residential Facilities for the Mentally Retarded Participating in the Medical Assistance Program

The temporary rules proposed and published at *State Register*, Volume 8, Number 20, pages 1134-1154, November 14, 1983 (8 S.R. 1134) are adopted with the following modifications:

#### Temporary Rules as Adopted

12 MCAR § 2.05301 [Temporary] Applicability.

Rules 12 MCAR §§ 2.05301-2.05315 [Temporary] establish procedures for determining the welfare payment rates for all residential facilities for the mentally retarded participating in the medical assistance program, except state-owned facilities. Rules 12 MCAR §§ 2.05301-2.05315 [Temporary] are effective on January 1, 1984, for payment rates for periods starting on or after January 1, 1984.



**12 MCAR § 2.05302 [Temporary] Definitions.**

B. Addition. "Addition" means an extension, enlargement, or expansion of the physical plant provided that the extension, enlargement, or expansion is for the purpose of increasing the number of licensed beds or improving resident care.

C. Applicable credit. "Applicable credit" means a reduction as a result of government grants, purchase discounts, rebates, refunds, income from ~~incidental~~ the sale of goods and services not covered by the per diem rate, adjustments for overcharges, insurance claims settlements, or any other adjustments reducing the facility's operating cost.

D. Betterment. "Betterment" means the renovation, ~~repair~~, or replacement of part of an existing capital asset to improve its function or extend its useful life.

F. Capital loan. "Capital loan" means a loan for the purpose of purchasing a capital asset, but only to the extent that the proceeds of the loan were actually applied to purchase the capital asset or a loan for the purpose of refinancing a capital loan.

G. Capital loan interest expense. "Capital loan interest expense" means interest payable under the terms of a capital loan, amortization of bond premium or discount, and amortization of any related financing cost paid by the provider.

N. Equity. "Equity" means the historical capital cost ~~paid by the current owner for~~ of the facility's capital assets ~~within~~ subject to the limitations in 12 MCAR § 2.05309 [Temporary] B. and C., decreased by the outstanding principal amount of the capital loans, and the historical capital cost of any capital assets retired from service, sold, or otherwise disposed of. Increases in the principal amount of existing capital loans due to refinancing or new capital loans due to a change of ownership for which the increase in interest expense is disallowed according to 12 MCAR § 2.05304 [Temporary] B.7.b. shall not be included in the outstanding principal amount of the capital loans for the purpose of calculating equity.

R. Funded depreciation. "Funded depreciation" means the sum deposited in a separate ~~eserow~~ account which shall be applied only to reduce or liquidate capital asset loans or replace capital assets ~~as required by~~ in accordance with 12 MCAR § 2.05304 [Temporary] C.

S. Historical capital costs. "Historical capital costs" means:

1. for a capital asset first placed in use on or after ~~October 1, 1983~~ January 1, 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use. ~~The historical capital cost shall not be adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in 12 MCAR § 2.05304 [Temporary] A.1.e in the medical assistance program.~~

2. for a capital asset first placed in use by a facility in the medical assistance program prior to ~~October 1, 1983~~ January 1, 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on or before ~~September 30~~ December 31, 1983, except as provided in 12 MCAR § 2.05304 [Temporary] A.1.c.

Y. ~~Management personnel.~~ "Management personnel" means ~~owners, corporate officers, board members, administrators, or any other person acting on behalf of the provider whether employed full-time, part-time, or as a consultant by the provider to direct the affairs of the facility including managing, planning, directing, or coordinating the operations of the facility, or supervising the program personnel.~~ Minor equipment. "Minor equipment" means equipment that has a useful life of more than one year and costs less than \$200. Examples of minor equipment are kitchen utensils, cleaning utensils, toasters, calculators, or wastebaskets.

AA. Operating cost category. "Operating cost category" means any one of the groupings of operating costs set forth in 12 MCAR § 2.05313 [Temporary] A.-C. The operating cost categories are program, maintenance, and administrative costs.

BB. Payment rate. "Payment rate" means the amount established by the commissioner to reimburse the provider for ~~care~~ service provided to the residents. The payment rate is calculated by adding together the operating cost payment rate, the property-related cost payment rate, and incentives or allowances determined in accordance with the provisions in 12 MCAR §§ 2.05301-2.05315 [Temporary].

DD. Physical plant. "Physical plant" means the building or buildings in which a facility program licensed to serve mentally

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## ADOPTED RULES

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retarded residents under Minnesota Statutes, section 252.28 is located, and all equipment affixed to the building and not easily subject to transfer. Physical plant does not include the land, land improvements, or any supplies or equipment not affixed to the building.

EE. Private paying resident. "Private paying resident" means a facility resident ~~who~~ whose care is not a recipient of paid for by the medical assistance program, cost of care program, or the ~~Title XX program~~ Community Social Services Block Grant for the date of service.

FF. Program. "Program" means those functions ~~of the staff and activities~~ of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents under 12 MCAR § 2.034 and Code of Federal Regulations title 42, ~~section 190, subpart G (1978)~~ sections 442.400 et seq.

GG. Program director. "Program director" means the person who ~~directs~~ supervises individual program planning and program activities related to carrying out the individual program plans.

KK. Rate year. "Rate year" means the facility's fiscal year period as approved by the commissioner on or before December 31, 1983, except as provided in 12 MCAR § 2.05314 [Temporary] for which a payment rate is effective. A rate year is normally a 12-month fiscal year.

MM. Repair. "Repair" means the cost of actions and materials needed to restore an existing capital asset to sound condition after damage or malfunction. Repair does not include routine or preventative maintenance, such as caulking, interior painting, oiling, or greasing.

NN. Reporting year. "Reporting year" means the facility's fiscal year for which the provider submits a cost report and which is the basis for the determination of the payment rate for the following rate year.

~~NN.~~ OO. Resident day. "Resident day" means a day for which resident services are rendered and billed or a day on which a bed is held and billed.

~~OO.~~ PP. Respite care. "Respite care" means activities which offer the primary caregiver needed relief from the daily demands of caring for a person with a physical or mental disability. ~~Respite care includes planned or emergency relief for the caregiver through the utilization of a variety of in-home or residential resources.~~

~~PP.~~ Title XX program. "Title XX program" means United States Code, title 42, ~~sections 301 et seq. as amended through December 31, 1982.~~

QQ. Top management personnel. "Top management personnel" means owners, corporate officers, board members, administrators, and other persons acting on behalf of the provider whether employed full time, part time, or as a consultant by the provider to direct, plan, or coordinate the business affairs of the facility. The administrator is the person in charge of the overall day-to-day activities of the facility.

RR. Useful life. "Useful life" means the length of time an asset is expected to provide economic service according to 12 MCAR § 2.05304 [Temporary] A.7. and 8.

~~RR.~~ Vendor. "Vendor" means an individual or organization that sells the provider goods or services for facility operation.

SS. Welfare day. "Welfare day" means a resident day for which reimbursement is billed to the medical assistance program, cost of care program, or ~~Title XX program~~ is paid under the Community Social Services Block Grant.

TT. Working capital loan. "Working capital loan" means a loan which is not used to acquire or refinance capital assets.

UU. Working capital interest expense. "Working capital interest expense" means the interest expense for working capital loans. The form of indebtedness includes notes, advances, finance charges, and various types of ~~receivable~~ short-term financing.

### 12 MCAR § 2.05303 [Temporary] Rate determination for operating costs.

A. Establishment of historical operating cost per diem. For rate years beginning on or after ~~December 31, 1983~~ January 1, 1984, the commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's historical operating costs. The review and adjustment must comply with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary].

~~1.~~ For facilities with ten beds or fewer The commissioner shall divide the historical operating costs by the greater of resident days or 85 percent of licensed capacity days in the reporting year in order to compute the facility's historical operating cost per diem.

2. For a facility with more than ten beds the commissioner shall divide the historical operating costs by the greater of resident days or 85 percent of licensed capacity days.

B. Establishment of the operating cost payment rate. For rate years beginning during the 1984 calendar year, each facility shall receive as an operating cost payment rate the historical operating cost per diem increased by at an annual rate of six percent. For rate years beginning during calendar year 1985 and thereafter, each facility shall receive as an operating cost payment rate, the historical operating cost per diem increased by one percent for each full percentage adjusted by the increase in the all urban consumer price index in (CPI-U) for Minneapolis-St. Paul as published by the Bureau of Labor Statistics for between the previous two Octobers, new series index (~~1967-100~~ 1967=100).

C. Operating cost adjustment allowance. In addition to the operating cost payment rate, each facility shall receive as an operating cost adjustment allowance ~~25~~ 27 cents per resident day.

D. Efficiency incentive. For rate years beginning on or after ~~December 31~~ January 1, 1984, the facility shall receive an efficiency incentive if the facility's historical operating cost per diem for that rate year is less than the facility's operating cost payment rate established for that rate year. The provider may keep the difference as an efficiency incentive unless the efficiency is due to a penalty or field audit adjustment as provided in 12 MCAR § 2.05314 [Temporary]. For rate years beginning January 1, 1985, and thereafter, one-half of the efficiency incentive earned in the previous rate year shall be added to the facility's operating cost payment rate. However, if the actual increase in the facility's historical operating cost per diem is greater than the operating cost payment rate established for that rate year, there shall be no retroactive cost settlement.

**12 MCAR § 2.05304 [Temporary] Determination of property-related cost payment rate.**

A. Depreciation. Allowable depreciation expense shall be determined as in 1-11.

1. Basis for calculating depreciation. The basis for calculating depreciation shall be the historical capital cost of the capital assets determined under a.-c.

a. For a capital asset first placed in use on or after ~~October 1, 1983~~ January 1, 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use. ~~The historical capital cost shall not be adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in e in the medical assistance program.~~

b. For a capital asset first placed in use in the medical assistance program prior to ~~October 1, 1983~~ January 1, 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on or before ~~September 30~~ December 31, 1983, except as provided in e d.

c. The historical capital cost of the capital assets shall not be adjusted for either a full or partial change of ownership or for any costs associated with replacing existing capital assets as a result of a casualty loss except as provided in d.

d. The historical capital cost of the capital assets shall be adjusted for a change in ownership which occurs as a result of the death or disability of the a principal owner if who has a principal owner with 50 percent or more ownership interest in the facility, or a forced buyout. This provision does not apply where the property is transferred to a close relative or a related organization as defined in 12 MCAR § 2.05301 LL. Disability means the situation in which a principal owner is mentally or physically incapacitated to such a degree that he or she is unable to carry out responsibility as an owner. The adjustment shall be made pursuant to regulations in effect on December 30 31, 1983.

3. Accumulated depreciation. ~~The accumulated depreciation of facilities on capital assets for providers entering the medical assistance program shall be recalculated~~ calculated using the useful life schedule in 7. and 8. starting from the later of the date of completion of construction, or the time of purchase by the current owner. In no case shall the accumulated depreciation on the capital assets exceed 50 percent of the historical capital cost of the capital assets.

4. Donated assets. Except for donations between a provider and a related organization, the value of the asset used to determine the depreciable basis shall be ~~the lesser of the price that an able buyer would pay a willing seller in an arm's length transaction or the appraised value of the asset.~~ A donated asset is one acquired for the facility without making any payment in the form of cash, property, or services. For donations between a provider and a related organization, the net book value to the donor shall be the basis for the donee.

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5. Additions or betterments. The historical capital cost of the capital assets in 1. ~~subject to the limitations in 12 MCAR § 2.05309 [Temporary] B. and C.~~ shall be increased for the actual cost of additions or betterments to assets capitalized according to 12 MCAR § 2.05311 [Temporary] D.1. and 2. ~~subject to the limitations in 12 MCAR § 2.05309 [Temporary] B. and C.~~ and shall be depreciated according to A. The increased historical depreciation expense shall be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred without regard to when during that reporting year the capital asset was purchased.

6. Gains and losses on disposal of equipment. Gains and losses on the disposal of equipment shall be included in computing allowable costs. A gain shall be an offset against the property-related cost category to the extent that the gain resulted from the depreciation reimbursed under these regulations or their predecessor. Gains or losses on trade-ins shall be reflected in the asset basis of the acquired asset. Claims for losses shall be limited to a total of ten cents per resident day per reporting year. Any excess loss not claimed during the reporting year may be carried forward to future years.

7. Depreciation rates for new capital assets. Depreciation shall be calculated on the basis of A., and the following useful life schedule:

b. physical plant betterments and additions (depreciated over the remaining life of the principal asset or useful life, but not less than 15 years);

8. Other useful lives.

a. Used capital assets. The useful life of used capital assets shall be assigned by the facility provider, considering the individual circumstances; however, the useful life assigned shall not be shorter than one-half of the useful life shown in the useful life schedule in 7. for the relevant capital asset.

b. Leasehold improvement. The useful life of a leasehold improvement shall be the lesser of useful life shown in 7. or 8.a. for the relevant capital asset, or the remaining term of the lease plus renewal periods.

9. Publicly-financed facility. Depreciation shall not be allowed on a facility or portion of a facility financed by federal, state, or local appropriations or grants unless the appropriation or grant is intended required to be repaid through the operating revenues of the facility.

10. No depreciation shall be recaptured following a sale of an asset or termination from the medical assistance program except for transfers of ownership allowed under A.I.c. Recapture of depreciation for transfers of ownership allowed under A.I.c. shall be calculated according to ~~12 MCAR §§ 2.05301-2.05315 [Temporary]~~ rules and regulations in effect on December ~~30~~ 31, 1983..

11. The total depreciation allowance paid to the facility for any depreciable capital assets, except land, asset shall not exceed the historical capital cost of ~~the~~ that asset.

B. Interest. Allowable capital loan interest expense shall be determined as given in accordance with 1.-7.

2. Interest charges between nonprofit funds. When a nonprofit provider borrows from its own restricted fund, interest paid by the general fund to the restricted fund ~~must not exceed~~ in excess of the interest rate the restricted fund is currently earning shall not be allowable. Interest expense on loans between operating and building funds shall not be an allowable cost.

3. Construction period interest expense. Construction period interest expense ~~related to construction costs~~ must be capitalized as a part of the cost of the facility. The period of construction extends to the earlier of either the first day a medical assistance recipient resides in the facility, or the date the facility is certified to receive medical assistance recipients.

4. Interest rate. The total allowable interest rate for any capital loans loan, including any points or financing charges, shall be calculated according to a. and b.

a. The total allowable interest rate for capital loans entered into on or after ~~December 31, 1983~~ January 1, 1984, shall be the lesser of the ~~actual~~ effective interest rate on the capital loan or a rate ~~one~~ 2.5 percentage ~~point~~ points above the published posted yield for standard conventional fixed-rate mortgages of the Federal Home Loan Mortgage Corporation in effect on January 1 of the year in which the loan is incurred for capital loans contracted on or after January 1 and before July 1 of that year, and on July 1 of the year in which the debt is incurred for capital loans contracted on or after July 1 and before January 1 of the following year.

b. The interest rate for capital loans entered into ~~prior to~~ on or before December 31, 1983, shall be as recognized under ~~statutes and rules~~ regulations in effect on December ~~30~~ 31, 1983.

5. Capital loan retirement. For the purpose of establishing the facility's property-related cost payment rate, except as provided in 12 MCAR § 2.05309 [Temporary] D., the portion of the debt reduction allowance in D. which must be applied to the

reduction of capital loans shall be applied first to reduce the principal on any capital loans on which the provider is only required to pay interest expense. The remaining portion of the debt reduction allowance which must be applied to reduction of capital loans shall be applied to the capital loan which has the highest interest expense due during the reporting year. If prepayment of the capital loan is prohibited by the funding source and the facility has no other capital loans, the portion of the debt reduction allowance in D. which must be applied to the reduction of capital loans shall be applied first to the reduction of any working capital loans outstanding; the balance shall be placed in the funded depreciation account.

6. Capital loan interest expense. Except as otherwise provided in 7., the interest expense on capital loans shall be allowed according to a.-e.

a. All interest expense for capital loans entered into prior to ~~December 31, 1983~~ January 1, 1984, shall be an allowable cost.

b. Facilities that have received determination of need approval under 12 MCAR § 2.0185 to implement Minnesota Statutes, section 252.28 and have an approved or effective interim rate under 12 MCAR § 2.052 on December ~~30~~ 31, 1983, shall be allowed the interest expense on the capital loans allowed in the settle-up payment rate. If the capital loans allowed in the settle-up payment rate exceed the limitation in c. no additional capital loan interest expense shall be allowed.

c. Interest expense for capital loans entered into on or after ~~December 31, 1983~~ January 1, 1984, shall be allowed for the portion of the capital loan which together with all other outstanding capital loans does not exceed 100 percent of the historical capital cost of the facility's capital assets subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

d. Interest expense for capital loans on capital assets acquired or leased on or after ~~December 31, 1983~~ January 1, 1984, shall be allowable ~~on the only~~ with respect to that portion of the capital loan which does not exceed 80 percent of the historical capital cost of the capital asset subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

e. Except for facilities covered in b., interest expense for capital loans on facilities constructed or established on or after ~~December 31, 1983~~ January 1, 1984, shall be allowable ~~on the only~~ with respect to that portion of the capital loan which does not exceed 80 percent of the historical capital cost of the capital asset subject to the limitations of B.4.a. and 12 MCAR § 2.05309 [Temporary] B. and C.

7. Changes in interest expense.

a. Subject to the limits of 6., changes in interest expense, except increases in interest expense due to refinancing of existing capital loans, or changes in ownership, shall be allowed in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred.

b. Increases in interest expense due to changes in ownership or the refinancing of a capital loan, except for renegotiations of a capital loan as required in the original terms of the capital loan, shall not be allowable.

c. Fifty percent of the annual savings resulting from decreased interest expense due to refinancing or renegotiation of existing fixed interest rate capital loans shall be a refinancing ~~capital~~ allowance added to the ~~provider's~~ property-related cost payment rate of the provider or its successor in interest. The annual savings shall be calculated by comparing the refinanced or renegotiated fixed interest rate capital loan with the original fixed interest rate capital loan to determine the ~~total~~ savings in interest expense each year. The annual refinancing allowance shall consist of one-half of the total savings equally divided over the term of the refinanced or renegotiated loan realized in the reporting year. The annual ~~savings~~ refinancing allowance shall be divided by resident days to determine the refinancing allowance per diem payment. The refinancing allowance shall not apply to refinancing of capital loans with variable interest rates.

C. Funded depreciation. Except as provided in 12 MCAR § 2.05309 [Temporary] D., providers shall fund depreciation according to the provisions in 1.4 5.

1. The annual deposit to the funded depreciation account shall be determined according to the following formula: (allowable depreciation—required annual principal payment specified in the capital loans) X (1—the percentage of equity determined in D.1.). In addition, providers who have capital loans on which prepayment is disallowed by the funding source shall deposit in the funded depreciation account the portion of the capital debt reduction remaining after reduction of working capital loans as required in B.5.

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3. Funded depreciation must be used for capital loan reduction or for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

4. No more than 50 percent of the annual cumulative total amount of allowable depreciation expense required to be deposited over the life of the funded depreciation account may be withdrawn for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

5. A separate funded depreciation account must be maintained for each facility.

6. Income earned on funds withdrawn for purposes other than 3. or in excess of the percent allowed in 4. shall be offset against the facility's property-related costs. The withdrawals shall be assumed to be on a first in, first out basis.

~~6. Facilities which~~ 7. Providers who do not deposit the required amount of depreciation in a funded depreciation account shall have their allowable capital loan interest expense for the facility reduced. The reduction shall be calculated by assuming the entire depreciation amount from the previous year was used to reduce capital loans.

D. Capital loan reduction allowance. Except for facilities qualifying for the exception as provided in 12 MCAR § 2.05309 [Temporary] D.4., each facility shall receive a 50 cent allowance per resident day for capital loan reduction.

4. The total amount of the capital loan reduction allowance and the amount which must be applied to reduction of the principal on capital loans shall be determined according to the following table:

| <u>Percentage of Equity</u> | <u>Percentage applied to Payment of Principal</u> |
|-----------------------------|---|
| From 0% to 10%              | 100%  |
| From 10% to 20%             | 50%   |
| 20% or more                 | 0%  |
| From 10% to 20%             | 50%   |
| 20% or more                 | 0%  |
| From 10% to 20%             | 50%   |
| 20% or more                 | 0%  |

| <u>Percentage of Equity</u> | <u>Allowance per Resident Day</u> | <u>Amount Which Must be Applied to Reduction of Principal</u> |
|-----------------------------|-----------------------------------|---|
| <u>0 through 10.00</u>      | <u>\$ .50</u>                     | <u>\$.50</u>  |
| <u>10.01 through 20.00</u>  | <u>.50</u>                        | <u>.25</u>  |
| <u>20.01 through 30.00</u>  | <u>.50</u>                        | <u>0</u>  |
| <u>30.01 through 40.00</u>  | <u>.75</u>                        | <u>0</u>  |
| <u>Over 40</u>              | <u>1.00</u>                       | <u>0</u>  |

The facility's total percentage of equity shall be determined by dividing its equity by its historical capital cost of capital assets.

~~2. For facilities which receive allowable property costs in place of lease or rental payments, the capital loan reduction allowance shall be applied to the lessor's assumed capital loan.~~

E. Property-related cost payment rate and incentives or allowances.

2. The commissioner shall compute the property-related cost payment rate for existing facilities with more than ten beds by dividing the desk-audited, property-related costs by 96 percent of licensed capacity days, except that. For facilities with ten or fewer beds the commissioner shall use the greater lesser of 96 percent of licensed capacity days or resident days or, except that in no case shall resident days be less than 85 percent of licensed capacity days. For newly constructed or newly established facilities the property-related payment rate shall be calculated according to 12 MCAR § 2.05306 [Temporary] A. and B.

3. Any incentives or allowances as determined in B.7.c., D., and F., and 12 MCAR § 2.05309 [Temporary] D. shall be added to the property-related cost payment rate. The facility shall not continue to receive these incentives if the department commissioner changes the reimbursement formula for property-related costs.

**F. Incentives for provider cost savings.**

1. **Vehicle purchase savings.** The commissioner shall establish an incentive payment for provider cost-savings initiatives undertaken in a-e.

a. On July 1 of each year, the commissioner shall establish target purchase guidelines for the purchase of utility vehicles and vans to be used by the facility.

b. The guidelines shall reflect the most recent price paid by the Department of Administration for similar vehicles used by the state.

c. On July 1 of each year, the commissioner shall establish target purchase guidelines for the purchase of specialized vehicle equipment such as ramps, lifts, or passenger restraint devices.

d. For rate years, beginning on or after January 1, 1985, if the cost of the vehicle purchase including specialized equipment is below that of the target purchase guideline for comparable equipment increased by four percent, then the provider shall receive one-half of the difference as a per diem allowance.

e. In establishing the payment rate for the savings identified under d., the savings shall first be divided over the useful life of the asset. The annual per diem rate shall be computed by dividing the annual savings figure by resident day.

2. **Energy savings incentive.** The commissioner shall approve requests for exceptions to the provisions of 12 MCAR §§ 2.05304 [Temporary] B.6.d. and e. and 2.05311 [Temporary] D.2. for initiatives designed to reduce the energy usage of the facility. The requests must be accompanied by an energy audit prepared by a professional engineer or architect registered in the state of Minnesota. The cost of the energy audit is an allowable operating cost. Energy conservation measures identified in the energy audit that:

a. have a payback period equal to or less than 36 months and a total cost not exceeding \$1 per resident day shall be exempt from the provisions of 12 MCAR §§ 2.05304 [Temporary] B.6.d. and e. and 2.05311 [Temporary] D.2.; or

b. have a payback period greater than 36 months or having a total cost in excess of \$1 per resident day shall be exempt from the provisions of 12 MCAR § 2.05304 [Temporary] B.6.d. and e.

**12 MCAR § 2.05305 [Temporary] Payment rates.**

A. **Temporary payment rate.** Unless the cost report is rejected during the initial review conducted under 12 MCAR § 2.05314 [Temporary] H.3., a temporary payment rate or the payment rate shall be established within 20 days of receipt of the cost report and supporting documentation ~~shall be~~ filed according to 12 MCAR §§ 2.05301-2.05315 [Temporary]. The temporary payment rate shall be the prior year's payment rate then in effect increased by ~~five percent~~ the maximum rate increase authorized by statute. The temporary payment rate shall be effective the first day of the facility's new year if the cost report is received within the deadlines in 12 MCAR § 2.05314 [Temporary] H. If the cost report is not received within the deadlines the temporary payment rate shall be effective the first day of the month following the month in which the cost report is received. The commissioner shall notify the facility and the respective county or human service boards in writing of the temporary payment rate determination and the effective date of the temporary payment rate. The temporary payment rate shall remain in effect until the desk audit is completed.

**C. Limitations to payment rate.** The payment rate shall be limited under 1.-3.

2. The payment rate must not exceed the final rate allowed the facility for the previous rate year by more than ~~five percent~~ the maximum rate increase authorized by statute.

3. The limits in 1. and 2. shall not apply to payments made by the commissioner for approved services for very dependent persons with special needs under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 8.

**12 MCAR § 2.05306 [Temporary] Rate-setting procedures for newly constructed or newly established facilities.**

A. **Interim payment rate.** Newly constructed or newly established facilities Providers may request an interim payment rate for newly constructed or newly established facilities. To receive an interim payment rate, the provider must submit a projected cost report in compliance with 12 MCAR §§ 2.05301-2.05315 [Temporary] to the extent applicable for the rate year in which the facility plans to begin operation. Provisions 12 MCAR § 2.05304 [Temporary] B.7.c. and F. shall not apply to interim payment

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rates. The interim property-related cost payment rate shall be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate shall be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. Prior to the effective date of the interim payment rate the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the payment rate until settle-up.

B. Interim payment rate settle-up. The interim payment rate shall be subject to retroactive upward or downward adjustment in accordance with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary] except that no incentives or allowances shall apply. The adjustments shall be made according to 12 MCAR § 2.05314 [Temporary] 1-2, based on actual resident days and actual costs in the facility's first reporting year. A provider may request a settle-up of its interim payment rate either at the end of the facility's first reporting year or after six months of historical cost experience. In no case shall the settle-up cost report cover less than six months. The interim payment rate shall not be in effect for more than 17 months. The settle-up payment rate must shall be based on the greater of resident days or 80 percent of licensed capacity days. Occupancy used for the rate year immediately following the reporting year must be based on an annualization of the resident days of the last three months of the interim reporting year but must not be less than 85 percent of licensed capacity days calculated according to 1. and 2.

1. The settle-up payment rate for facilities with interim payment rates established on or before December 31, 1983, shall be calculated according to rules in effect when the interim rate was established.

2. The interim payment rates established on or after January 1, 1984, shall be subject to retroactive upward or downward adjustment in accordance with 12 MCAR §§ 2.05301-2.05315 [Temporary] except that:

a. 12 MCAR § 2.05304 [Temporary] B.7.c. and F. shall not apply;

b. the settle-up property-related cost payment rate shall be calculated using the lesser of resident days or 96 percent of licensed capacity days but no less than 80 percent of licensed capacity days;

c. the settle-up operating cost payment rate must be based on the greater of resident days or 80 percent of licensed capacity days;

d. the settle-up payment rate shall be the lesser of the payment rate calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary] or not exceed the interim payment rate increased by 4.166 more than 0.4166 percent for each full month between the effective date of the first medical assistance resident enters the facility interim payment rate period and the end of the first fiscal period.

C. Changes in occupancy levels. For First payment rate after the interim rate period. The first two reporting years following the period covered by the settle up payment rate, newly constructed or newly established facilities after the interim rate period shall compute occupancy levels based on the greater of annualized be calculated according to 12 MCAR §§ 2.05301-2.05315 [Temporary] except that the calculation of resident days for the last three months shall be based on an annualization of the reporting year or resident days in the facility's reporting year. The payment rate in subsequent rate years shall be based on the occupancy from the most recently completed last three months of the interim reporting year period.

12 MCAR § 2.05307 [Temporary] Allowable operating costs.

A. Licensure and certification costs. The costs of meeting the applicable licensure and certification standards listed in 1.-6. are allowable operating costs for the purpose of setting facility payment rates unless otherwise provided in 12 MCAR §§ 2.05301-2.05315 [Temporary]. The standards are:

1. federal regulations for intermediate care facilities for mentally retarded services provided by the Code of Federal Regulations, title 43, section 190, subpart G (1978) 42, sections 442.400 et seq.;

B. Routine service costs. The costs of routine services including program operating, maintenance operating, and administrative operating costs as defined in 12 MCAR § 2.05313 [Temporary], are allowable operating costs for the purpose of setting facility rates unless otherwise provided in 12 MCAR §§ 2.05301-2.05315 [Temporary].

12 MCAR § 2.05308 [Temporary] Nonallowable costs.

For the purpose of establishing the payment rate for rate years beginning during the calendar year 1984, nonallowable costs in A.-BB. shall be determined according to regulations in effect on December 31, 1983. For the purpose of establishing the payment rate for subsequent years, the costs of items A. ~~EE~~ BB. as well as costs determined by the commissioner to be incurred due to management inefficiency, unnecessary capital assets, or unnecessary services are not allowable for purposes of setting payment rates. If any of the costs of items A. ~~EE~~ BB. are included in any account of the provider or the provider group, they must be identified on the facility's cost report unless the basis for the disallowance is inadequate or unavailable supporting documentation.



## ADOPTED RULES

Q. costs of personal need items such as personal clothing normally paid for by residents;

V. costs of services provided to a resident by a licensed medical therapeutic or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee for service basis, including:

~~BB.~~ payments made in lieu of real estate taxes, unless such payments are made by nonprofit providers; pursuant to a legally enforceable, noncancellable, written contract entered into prior to January 1, 1984.

~~CC.~~ facility or related organization costs for which adequate documentation is not maintained or provided as required by 12 MCAR §§ 2.05301-2.05315 [Temporary];

~~DD.~~ other costs determined to be nonallowable in accordance with 12 MCAR §§ 2.05301-2.05315 [Temporary]; and

~~EE.~~ related organization costs for which a breakdown in accordance with 12 MCAR § 2.05313 [Temporary] is not provided.

12 MCAR § 2.05309 [Temporary] Cost limitations.

A. Top management compensation. Annual compensation for top management personnel shall be paid according to the limits in 1.-10.8.

1. To receive top management compensation, at least one or any combination of the top management personnel must:

a. for a facility provider or provider group of facilities with a total bed complement of 48 or fewer beds, document at least five hours of top management services per six licensed beds per week; or

b. for a facility or group of facilities with a total bed complement of more than 48 beds, document at least 40 hours of top management services per week;

~~c.~~ for a provider group with a total bed complement of more than 48 beds, document at least one-half of the total five hours required in 1. must be spent by the of top management personnel at the services per six licensed beds per week, except that if a facility or facilities from which compensation is claimed. within the provider group exceeds 48 beds, the requirement in b. shall apply to that facility; or

~~d.~~ if less than the required hours at the facility may be spent by an on site manager or by of top management personnel who spend time at the services are provided, compensation shall be pro rated based on the maximum amount allowed for that facility.

~~2.~~ 2. The sum of compensation paid to reimbursed for all top management personnel for performing top management functions for an individual or organization provider group that owns or operates:

c. more than one facility with a total bed complement of 48 or more beds, shall not exceed \$39,072 plus an additional \$335 for each licensed bed over 48. The top management compensation for a single facility within the group shall not exceed the lesser of \$814 times the number of licensed beds or \$39,072.

~~3.~~ 3. In no case shall management the total compensation paid reimbursed according to 12 MCAR §§ 2.05301-2.05315 [Temporary] to an individual, any portion of whose compensation is reimbursed as top management compensation, exceed \$39,072 \$51,750. A top management individual who performs services for the facility or provider group on less than a full-time basis, may receive as allowable compensation no more than a pro rata portion of \$51,750 based on time worked.

~~4.~~ 4. If a person compensated for top management functions in a facility or provider group of facilities ~~shall not be~~ compensated for providing consultant services to that facility or provider group of facilities the compensation for consultant services however designated shall be subject to the top management compensation limitation.

~~5.~~ 5. Top management compensation shall not include, within the limits of 4. and 5., the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, or paid vacations, holidays, or sick leaves, if the same benefit and the same benefit level is provided to all or substantially all of the facility's employees.

~~6.~~ 6. An individual compensated for top management services on a less than full-time basis for a facility or provider group of facilities may be compensated for other necessary services which the individual is qualified to perform. Compensation

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for another necessary service must be at the pay rate for that service. Documentation of the necessary service performed must be maintained according to 12 MCAR § 2.05311 [Temporary] E.3. and ~~shall~~ may be subject to licensing review by the commissioner.

~~8-~~ 7. Compensation paid to the program director for performing program director functions or to top management personnel for performing other than top management functions shall not be included in the top management compensation limitation.

~~9-~~ 8. For each full percentage difference between the previous two Octobers, the all urban consumer prices indexes for the months of October, 1983, and October, 1984, in price index (CPI-U) for Minneapolis-St. Paul, as published by the Bureau of Labor Statistics, new series index (1967=100), the top management compensation per bed limitation and the dollar limitation shall be adjusted by one percent. The adjustment required by this formula shall be effective on January 1, 1985 and each January 1 thereafter. The calculation shall be made annually.

B. Limitation on land costs. For purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the cost of land purchased prior to January 1, 1984, shall be limited to \$1,000 per bed for land purchased prior to according to rules and regulations effective on December 31, 1983, and to \$3,000 per bed for. The cost of land purchased on or after December 31, 1983 January 1, 1984, shall be limited to \$3,000 per bed.

C. Investment per bed limitation. For the purposes of 12 MCAR §§ 2.05301-2.05315 [Temporary], the facility's historical capital costs shall be limited by 1.-4.

1. The limitation on the facility's depreciable assets shall be established when the facility enters the medical assistance program.

c. The limitation in b. shall be adjusted annually beginning January 1, 1984, by ~~one~~ the percentage point for each full percentage point increase in the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business Statistics for the previous two Octobers. Facilities entering the medical assistance program after 1983 shall be subject to the adjusted limitation in effect at the time the facility entered the program.

4. After the facility's first ~~five~~ three full reporting years and every ~~five~~ three full reporting years thereafter, the facility's investment per bed limitation established according to 1.-3. shall be increased by the average of the annual percentage increases in the investment per bed limitation for the current reporting year and the ~~previous four~~ previous three full reporting years. The adjustment to the facility's investment per bed limitation shall not apply to any original construction and investment costs. Depreciation on the original construction and investment costs shall continue to be limited by the per bed limitation in effect when the facility entered the medical assistance program.

D. Reimbursement of lease and or rental costs expenses. The facility's lease or rental and lease costs shall be limited by determined according to 1.-4-10.

1. Lease and rental costs; short term. The costs of a rental or lease for a period of less than 60 days in a fiscal year shall be an allowable cost.

2. ~~Lease and rental costs; long term.~~ The cost of a rental or lease for a period of more than 60 days in a facility's fiscal year shall be the lesser of the lease or rental cost or property related costs as calculated under 12 MCAR §§ 2.05301-2.05315 [Temporary].

~~3-~~ 3. Rentals of office items equipment. Rentals of office equipment other than furnishings shall be allowable costs.

4. ~~Exception. Lease and~~ 3. Arms-length leases or rental agreements. Leases or rental costs for arm's length transactions signed or incurred before October 1, 1983, shall be allowed under 12 MCAR § 2.052. This exception does not apply to lease renewals, negotiations, or extensions occurring on or after October 1, 1983, or to agreements shall be considered bona fide, arms-length leases unless the lease or rental costs which were disallowed under 12 MCAR § 2.052. charges:

a. result from sale and lease back arrangements;

b. result from a lease with option to buy at less than anticipated value; or

c. are paid to a related organization.

4. Lease or rental costs; long term. The costs of a lease or rental for a period equal to or greater than 60 days shall be an allowable cost subject to the following limitations:

- a. Lease or rental costs which are not bona fide, arms-length leases as defined in 3. shall be disallowed.
- b. Bona fide, arms-length leases or rental costs incurred under agreements entered into after December 31, 1983, shall be disallowed.
- c. Bona fide, arms-length leases or rental costs incurred under agreements entered into on or before December 31, 1983, are allowable under rules and regulations in effect on December 31, 1983, subject to the limitations in 6.
- d. Renewals, renegotiations, or extensions of leases or rental agreements in c. are allowable to the extent that the new lease or rental cost does not exceed the previous lease or rental cost for that capital asset.
5. Payments in lieu of leases or rental costs. For lease or rental costs disallowed under 4.a. or b., the facility shall receive, in lieu of the lease or rental costs, depreciation, interest, and other reasonable costs of the lessor, such as real estate taxes. Depreciation and interest shall be calculated under 12 MCAR § 2.05304 [Temporary] A. and B., subject to the limitations in B. and C., and shall be based on the lessor's historical cost of the capital assets and historical capital debt. Any other costs of the lessor included in the lease shall be allowable subject to 12 MCAR §§ 2.05301-2.05315 [Temporary].
6. Limitation on allowable lease or rental costs. Except for 1. and 2., allowable lease and rental costs recognized under 4.c. and d. shall be subject to the limitations in B. and C., determined by calculating the present value of the lease or rental costs exclusive of real estate taxes and other costs assumed by the lessee. The interest rate used in capitalizing the lease or rental costs shall be the lessor's interest rate or, if that interest rate is not available, 2.5 percentage points above the published posted yield for standard, conventional, fixed-rate mortgages of the Federal Home Loan Mortgage Corporation in effect the first day of the month in which the lease or rental agreement was effective.
7. Incentives and allowances. The following incentives and allowances shall be paid to leased facilities, subject to a. and b.:
- a. Providers with physical plant rental or physical plant lease agreements recognized under 4.c. and d. shall receive a lease reduction allowance of 50 cents per resident day.
- b. Providers with physical plant lease or rental costs disallowed under 4.a., if such a disallowance was the result of a less than arms-length agreement under 3.c. or disallowed under 4.b., shall receive the capital loan reduction allowance subject to 12 MCAR § 2.05304 [Temporary] D. except that providers who have lease or rental costs disallowed under 4.b. shall not be required to apply any portion of the allowance toward the reduction of the principal on capital loans.
8. Funded depreciation. For leased facilities depreciation shall be funded in accordance with a. and b.
- a. Any facility or related organization that receives payment in lieu of lease or rental costs for a physical plant under 4.a., if such a disallowance was the result of an agreement which was not a bona fide, arms-length lease or rental agreement under 3.c., must fund depreciation in accordance with 12 MCAR § 2.05304 [Temporary] C.
- b. Any facility that receives depreciation expenses for capital assets used in and owned by the facility must fund depreciation in accordance with 12 MCAR § 2.05304 [Temporary] C.
9. Lease expense reduction allowance. A lease expense reduction allowance shall be allowed subject to the limits of a. and b.
- a. Fifty percent of the annual savings resulting from a decrease in the facility's lease or rental costs recognized under 4.c. due to renegotiation of existing rental or lease agreements shall be a lease expense reduction allowance. The savings shall be calculated by comparing the annual renegotiated lease payment with the annual lease payment in the previous reporting year. The annual refinancing allowance shall consist of one-half of the savings. The annual lease expense reduction allowance shall be divided by resident days to determine the lease expense reduction allowance per diem payment rate. The renegotiated allowance is applicable only to the renegotiation of lease or rental agreements that have equal lease or rental payments over the term of the lease.
- b. Lease or rental agreements having unequal payments over the term of the agreement may receive a lease expense reduction allowance calculated in accordance with a. if:

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(1) fixed percentage increases are specified; or

(2) a schedule containing future lease payments is contained in the lease agreement being renegotiated.

10. Purchase of previously leased capital assets. The provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary] shall be used to determine the allowable property-related cost for facilities which have lease or rental agreements and subsequently purchase the same capital asset. However, in no case shall the allowed property-related costs on the purchased capital asset exceed the amount formerly allowed for the lease or rental agreement under either 12 MCAR § 2.052 or 12 MCAR §§ 2.05301-2.05315 [Temporary].

### E. Working capital interest expense.

1. Working capital interest expense on loans incurred prior to ~~December 31, 1983~~ January 1, 1984, shall be allowed under ~~12 MCAR § 2.052~~ the rules and regulations in effect on December 31, 1983.

2. Reimbursement for working capital interest expense for existing facilities shall be limited under a. and b.

a. For the rate year years beginning on or after December 31, 1983 during calendar year 1984, the total amount of working capital interest expense incurred by a facility during a reporting year allowed for purposes of determining the payment rate shall not exceed the total amount included in the payment of working capital interest expense incurred by the facility during the reporting year immediately preceding the rate year in effect on December 30, 1983.

b. For the rate year years beginning on or after December 31, 1984 during calendar year 1985, the total amount of working capital interest expense incurred by a facility during a reporting year allowed for purposes of determining the payment rate shall not exceed 80 percent of the allowable working capital interest expense as determined in a.

3. Working capital interest expense for newly facilities constructed or newly established facilities after January 1, 1984 shall be limited under a. and b.

a. For the interim and settle-up rates the total amount of working capital interest expense ~~incurred~~ allowed shall not exceed 2.5 percent of the facility's allowable operating costs during the reporting year.

b. For the rate year following the settle-up the total amount of working capital interest expense ~~incurred~~ allowed shall not exceed 80 percent of the allowable working capital interest expense as determined in a.

### F. Retirement contributions.

1. Retirement contributions for each employee shall be limited to the cost of either a United States Internal Revenue Service approved pension or profit sharing plan but not both.

2. ~~Retirement contributions made for a nonvested past employee shall be offset against the total cost of retirement contributions for the reporting year.~~

G. Therapeutic overnight trips, camping, and vacations for residents. The provider may use facility staff, supplies, equipment, and vehicles ordinarily provided as part of the facility program for therapeutic overnight trips, camping, and vacations for residents. In addition, up to \$300 per year per resident may be ~~reserved in the facility budget~~ allowed for fees, tickets, travel, lodging, and meals while residents are away from the facility. Other costs may be paid from other funding sources such as voluntary contributions from residents, relatives, and fund raisers.

### 12 MCAR § 2.05310 [Temporary] Related organization costs.

D. Assets of related organizations. The cost of ownership of a capital asset owned by a related organization and used by the facility may be included in the allowable cost of the facility. When the capital asset is sold or otherwise disposed of by the related organization and the depreciation ~~was~~ on the asset has been claimed as a facility cost, any gain realized from the sale by the related organization must be transferred to the facility as an offset against the facility's property-related cost category.

### 12 MCAR § 2.05311 [Temporary] Cost principles.

The provider must use the cost principles in A. ~~E.~~ I. to report costs. The commissioner shall use these cost principles to determine allowable costs.

A. Cost criteria. For rate setting purposes, a cost must satisfy the following criteria:

3. The cost is for goods or services actually provided to the facility and the cost is actually paid for by the facility within ~~75~~ 180 days after the close of the reporting period.

B. Compensation for personal services. Compensation for personal services includes all the remuneration paid currently,

accrued or deferred, for services rendered by the provider or employees of the facility. Only compensation costs for the current reporting period are allowable.

1. Compensation includes:

d. the costs of assets, supplies, equipment, vehicles, services, or any other in-kind benefits the provider or employees receive ~~or~~ for personal use from the facility or related organization, except the cost of assets, services, or other in-kind benefits incurred as a necessary cost for an employee who is required to reside in the facility as a condition of employment; and

2. The facility must have a written policy for payment of compensation for personal services. The policy must:

a. relate the individual's compensation to the performance of specified duties and to the number of hours worked by the individual; and

b. result in consistent treatment of employees working in similar situations within the facility and other facilities owned by the same provider; and

c. specify the nature and cost to the facility or provider group of any in-kind benefits included in the compensation.

D. Capitalization. Capital assets except for land shall be treated according to 1.-8. subject to the limitations in provisions of 12 MCAR § 2.05304 [Temporary] A.:

1. Expenditures for capital assets ~~except land~~, additions, and betterments ~~directly related to resident care~~ must be capitalized and depreciated if the item normally has a useful life of more than one year and a unit cost of ~~\$150~~ \$200 or more.

2. ~~The purchase of~~ A provider who purchases during a reporting year of capital assets except land which for a facility, minor equipment, additions, or betterments that have a useful life of more than one year and, a unit cost of less than \$150 \$200 but more than \$50 \$100, and which have an aggregate cost in excess of \$500 the greater of \$1,000 or five cents per resident day must be capitalized ~~capitalize and depreciated~~ depreciate those purchases exceeding the aggregate cost limit for the facility.

3. ~~The provider facility may expense the cost of any repair which any repair that costs more less than \$150. \$300, if the provider expenses the cost of a that repair; the cost of the repair must be expensed in the reporting year in which the costs are incurred and must be reported on a separate schedule indicating the cost and nature of the repair. The payment rate for the rate year following the current rate year shall be adjusted for the cost of the expensed repairs according to a.-e.~~

a. ~~The amount claimed for the expensed together with all other repairs shall be computed on a per diem basis.~~

b. ~~The amount computed in a. shall be subtracted from the prior year's payment rate. If the prior year's payment rate is limited by 12 MCAR § 2.05305 [Temporary] C., the amount computed in a. shall be subtracted from the prior year's payment rate before application of the, does not exceed the greater of \$1,500 or 30 cents per resident day. All repairs costing \$300 or more, together with those repairs exceeding the limitation.~~

c. ~~The amount computed in b. shall be used as the base to which the limitation in 12 MCAR § 2.05305 [Temporary] C. shall be applied to determine the maximum payment rate for the following rate year, must be capitalized and depreciated over the remaining useful life of the repaired capital assets.~~

4. Provisions 1. ~~and~~, 2., and 3. shall be applied to expenditures incurred on or after ~~December 31, 1983~~ January 1, 1984. Expenditures incurred on or before ~~December 30~~ 31, 1983, shall be capitalized according to ~~12 MCAR § 2.052~~ rules and regulations in effect on December 31, 1983.

5. ~~Items such as land, land improvements, whose maintenance or construction are not the responsibility of the provider, land, and goodwill, whose maintenance or construction are not the responsibility of the provider shall not be depreciable assets.~~

7. Construction ~~financing~~ period interest expense, feasibility studies, and other costs related to construction must be capitalized and depreciated over the life of the physical plant.

8. Financing costs must be amortized over the term of the loan ~~or the life of the asset, whichever is greater.~~

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E. Adequate documentation. Adequate documentation must:

2. be maintained in a separate file manner that each transaction can be easily identified for each facility;

G. Documentation of compensation. Compensation for personal services, ~~regardless of whether treated as direct or indirect costs~~, must be documented on payroll records. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees which are chargeable to more than one cost category must be supported by time distribution records. The allocation method used must produce a proportional distribution of time spent performing assigned duties. If the services are rendered on less than a full-time basis, the reasonable compensation must be proportional to that paid for services rendered on a full-time basis.

H. Documentation of mileage; motor vehicle log. Except for vehicles exclusively used for facility business, the provider must maintain a motor vehicle log for each vehicle used by the facility that shows personal, ~~facility~~, and ~~resident~~ facility usage. Mileage paid for the use of a private vehicle must be documented.

### 12 MCAR § 2.05312 [Temporary] Cost allocation procedures.

A. Cost category allocation principles. Cost classification to cost categories is the process of charging costs to the appropriate cost category and compiling a total cost for each cost category to be recorded on the cost report. Cost category allocation principles shall be as provided in 1.-3.

2. Costs that cannot be specifically classified to one or more cost category shall be classified to the ~~general~~ administrative cost category in accordance with 12 MCAR § 2.05313 [Temporary] C.

B. Allocation of personal expenses for owners, ~~providers~~, or employees whose primary residence is in the facility. Allocation procedures given in 1.-4. must be applied to personal expenses of owners, ~~providers~~, or employees whose primary residence is in the facility to the extent that the costs were included in the facility's costs.

### 12 MCAR § 2.05313 [Temporary] Reporting of costs by cost category.

The costs for routine services must be reported in cost categories A.-D.

A. Program operating costs. The direct costs of program functions are included in the program operating cost category. These costs include:

1. salaries for program staff, including the program director, and unit coordinators, and nursing staff;

B. Maintenance operating costs. The costs listed in 1.-4. are included in the maintenance operating cost category. For reporting purposes, costs in 2.-4. may be grouped together.

4. plant operations and maintenance services including:

d. nondepreciable repairs and minor equipment not subject to capitalization under 12 MCAR § 2.05304 [Temporary];

and

C. Administrative operating costs. The costs listed in 1. and 2. are included in the administrative operating cost category.

1. The costs in a.-w. are incurred by the provider for administering the overall activities of the facility including:

u. ~~amortization of pre-opening costs~~;

~~w.~~ working capital interest expense; and

~~w.~~ v. indirect costs allocated as provided in 12 MCAR § 2.05312 [Temporary] A.2.

D.e Property-related costs. The costs listed in 1.-7. are included in the property-related cost category:

5. amortization of pre-opening expenses; and

### 12 MCAR § 2.05314 [Temporary] General reporting requirements and submittal procedures.

A. Required reports. The provider must submit an annual cost report covering the facility's reporting year on forms supplied by the commissioner, in order to receive medical assistance payments or other reimbursements from the department. If a certified audit has been prepared it must be submitted with the cost report. Other reports, supporting documentation, and worksheets which must be submitted with the cost report include:

4. a list of the facility's capital and working capital loans outstanding during the reporting year, the name of the lender, the term of debt, interest rate of debt, interest and principal payments for the current year and all remaining years, and the original amount of loans or a signed statement that no changes have been made in the documents on file with the department;

5. a schedule of the facility's funded depreciation ~~eserow~~ account;

## ADOPTED RULES

6. a statement of ownership of the facility including the name, address, and proportion of ownership of sole proprietorships and of all owners of privately held or closely held corporations and partnerships which have an interest of three percent or more in the facility, and of publicly held corporations which owners who have an interest of 15 percent or more in a publicly held corporation which has an interest of three percent or more in the facility, or signed statement that no changes have been made in the documents which are on file with the department;

7. a list of all entities in the provider group which included costs in the cost report in excess of \$1,000 annually or signed statement that no changes have been made in the documents which are on file with the department;

9. copies of leases and other documents related to the lease of the physical plant and land, or a signed statement indicating that no changes have been made in the documents on file with the ~~department~~ commissioner. Lease documents shall include information on the original historical capital cost of the physical plant and land and the interest rate information listed in 4. as paid by the lessor;

13. a schedule of all repairs that cost more than \$150 and that were expensed during the reporting year when the total cost of the repairs exceeds the greater of \$1,500 or 30 cents per resident day. This schedule shall indicate the cost and nature of the repair;

15. a breakdown of all costs included in the related organization's management fees charged to the provider and the related organization's costs directly allocable to the facility. The breakdown shall include all costs of items as listed in 12 MCAR § 2.05313 [Temporary] C. except that related organizations that have a federally approved cost allocation plan which has been documented by the provider, may break down the management fee or central office costs according to the approved plan. The supporting schedules shall include the related organization's income statement, the cost allocated to each facility, related organization, and non-related organization, and explanation of the method of allocation used.

B. Supplemental reports. In order to substantiate the payment rate, the commissioner may require the provider to submit 1.-5.

2. separate audited or unaudited financial statements from if they have been prepared for each entity in the provider group. If a certified audited financial statement is not available for any entity in the provider group, then unaudited financial statements may be submitted for that entity. Financial statements must include a balance sheet, income statement, statement of retained earnings, and any applicable notes to the financial statements;

3. copies of purchase agreements, consultant contracts, and other documents related to the purchase or acquisition of depreciable assets equipment, goods, and services;

4. copies of leases and other documents related to the lease of the equipment, furnishings, and goods. Lease documents shall include information on the historical capital cost of the equipment, furnishings, and goods, and the interest rate information listed in A.4. as paid by the lessor; and

C. Short period costs reports. Only

1. Providers with newly constructed or newly established facilities, or facilities that have an ownership change of more than 50 percent may file two short period costs cost reports during the first two years of operation. Not No more than two short period cost reports may be filed.

2. Providers with facilities that have a change of ownership of more than 50 percent may file short period cost reports during the first two years following the change in ownership. No more than two short period cost reports may be filed.

3. Providers terminating participation in the medical assistance program must file a short period cost report if the termination does not occur at the end of the facility's rate year.

4. Except for cost reports filed due to termination of participation in the medical assistance program, each short period cost report must cover a period of at least six months.

H. Reporting deadlines and extensions.

3. Rejection of reports. Within 20 days after receipt of the cost report, the commissioner shall conduct an initial review of the cost report. If the commissioner finds that the cost report is inaccurate or does not contain the items required in A., the

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## ADOPTED RULES

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commissioner may reject the cost report including documents and worksheets or may require additional information to support the payment rate request. The corrected report or the additional information requested must be submitted to the commissioner within 30 days of the request or the report shall be rejected. The commissioner shall extend this time if the provider makes a written showing of good cause and if the commissioner determines that the delay in receipt of the information will not prevent the commissioner from establishing rates in a timely manner as required by law.

### I. Audits and adjustments.

1. Audits. The commissioner shall subject all reports and supporting documentation to audits to determine compliance with 12 MCAR §§ 2.05301-2.05315 [Temporary].

a. The provider may request in writing a field audit. If a field audit is requested, the commissioner shall commence the field audit within 180 days of receipt of the written request.

b. The commissioner shall cause the field audit to be completed within 90 days after commencement for a provider with a single facility or within 180 days for a provider group. The commissioner may suspend, by written notice to the provider, the conduct of a field audit if the provider's books and records are unavailable or unauditible. The conduct of the field audit shall remain suspended until the provider certifies in writing that all deficiencies that caused the suspension have been remedied. The deadline for completion of the field audit shall be extended by the length of the suspension.

c. If the commissioner fails to commence or complete the field audit to be commenced or completed within the provisions of a. or b., the provider may seek an order compelling the commissioner to commence or complete the field audit. No other remedy shall be available under this rule.

2. Adjustments. An adjustment to a payment rate determined according to 12 MCAR §§ 2.05301-2.05315 [Temporary] shall be made according to a.-h. if a desk or field audit of the facility's accounting and statistical records, cost reports, or amended cost reports identifies errors or omissions.

b. Retroactive adjustments to the facility's temporary payment rate or payment rate shall be made as a result of desk and field audit findings, except that field audit findings shall be limited by the restrictions in a. Adjustments to the payment rate shall be limited to the four complete reporting years preceding the date on which an audit commences.

J. Penalties. The commissioner shall impose any one or a combination of the following penalties for noncompliance with the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary].

4. If a field audit reveals inadequacies in the facility's bookkeeping and accounting practices, the commissioner may require that the provider engage competent professional assistance to properly prepare the required reports. Failure to remedy the inadequacies in the facility's bookkeeping and accounting practices within 90 days of the ~~day~~ date of written notice may result in the application of the penalty in 1.

### 12 MCAR § 2.05315 [Temporary] Appeal procedures.

A. Scope of appeals. A decision by the commissioner may be appealed by the provider or a county welfare or human services board if the following conditions are met:

3. the dispute over the decision ~~cannot be~~ has not been resolved informally between the commissioner and the appealing party.

B. Filing of appeals. To be effective, an appeal must meet the following criteria:

1. The provider or county welfare or human services board must notify the commissioner of its intent to appeal within 30 days of receiving the payment rate determination or decision which is being appealed. The appeal must be filed with the commissioner, in writing, within 60 days after receiving the payment rate determination or decision which is being appealed.

C. Resolution of appeal. The appeal shall be heard under the contested case provisions set forth in Minnesota Statutes, chapter 14, and rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through any informal dispute resolution method including settlement or through, mediation, or modified appeal procedures established by agreement between the commissioner and the chief hearing examiner.

## Waste Management Board

### Adopted Amendments to Rules Governing the Solid Waste Processing Facilities Demonstration Program

The rules proposed and published at *State Register*, Volume 8, Number 18, pages 1004-1005, October 31, 1983 (8 S.R. 1004) are adopted as proposed.



# OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

## Office of the Secretary of State

### Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is March 6, 1984.

**MATERNAL AND CHILD HEALTH ADVISORY TASK FORCE** has 1 vacancy open immediately for a professional member. The task force shall review and report on the health care needs of mothers and children throughout the state of Minnesota. Also review and report on the type, frequency and impact of existing maternal and child health programs, including programs administered by the Commissioner of Health. No members shall be employees of the State Board of Health. Members receive expenses. For specific information contact the Maternal and Child Health Advisory Task Force, Dept. of Health, Community Services Division, 717 Delaware St. S.E., Mpls. 55440; (612) 623-5265.

**FAMILY FARM ADVISORY COUNCIL** has 2 vacancies open immediately for 1 livestock farmer representative and 1 officer from a commercial lending institution. The council assists farmers in obtaining credit to purchase farm real estate by guaranteeing loans and deferring interest payments. Members are appointed by the Commissioner of Agriculture for 4 year terms. Monthly meetings; members receive \$35 per diem plus expenses. For specific information contact the Family Farm Advisory Council, Wayne Marzolf, Dept. of Agriculture, 90 W. Plato Blvd., St. Paul 55107; (612) 296-8435.

**INTERGOVERNMENTAL INFORMATION SYSTEMS ADVISORY COUNCIL** has 1 vacancy open immediately for a member from a county within the metro area. The council assists local governments in developing automated information systems by awarding grants. Members are appointed by the Governor. Monthly meetings. For specific information contact the Intergovernmental Information Systems Advisory Council, Centennial Office Bldg., 5th Floor, 658 Cedar St., St. Paul 55155; (612) 297-2172.

**MINNESOTA BOARD OF NURSING** has 1 vacancy open immediately for a public member. The board licenses professional and practical nurses; disciplines licensees; renews licenses; approves nursing schools which prepare for RN and LPN licensure; registers nursing corporations. Members are appointed by the Governor. Members must file with EPB. Meetings at least 6 times a year; members receive \$35 per diem plus expenses. For specific information contact the Minnesota Board of Nursing, 717 Delaware St., S.E. Mpls. 55414; (612) 623-5493.

**BOARD ON AGING** has 1 vacancy open immediately for a member. The board develops, coordinates, evaluates and administers federal and state funds for programs for the aging of approximately 16 million; makes grants to 13 Area Agencies on Aging and non-profit agencies. Serves as an advocate for older persons, programs and legislation for older persons in Minnesota. 25 members, appointed by the Governor, include at least 1 member from each congressional district. Monthly meetings, Metro Square Building, St. Paul; members receive \$35 per diem plus expenses. For specific information contact the Board on Aging, Suite 204, Metro Square Bldg., St. Paul 55101; (612) 296-2770.

**ASSESSORS BOARD** has 1 vacancy open immediately for a public member. The board licenses assessors and provides continuing education for assessors. Members are appointed by the Governor. Members must file with EPB. Monthly meetings. For specific information contact the Assessors Board, 2nd Floor, Centennial Office Bldg., St. Paul 55145; (612) 296-5040.

**ADVISORY COUNCIL FOR STEAMFITTING EXAMINATIONS** has 1 vacancy open immediately for a practical journeyman steamfitter. The council examines and licenses contracting journeyman steamfitters; inspects the installation of all high pressure steam piping. Members are appointed by the Commissioner of Labor and Industry. Meetings are twice a year and members receive \$25 per diem. For specific information contact the Advisory Council for Steamfitting Examinations, Room 567 Space Center, 444 Lafayette Rd., St. Paul 55101; (612) 296-2193.

**CAPITOL AREA ARCHITECTURAL AND PLANNING BOARD** has 1 vacancy open for a public member. The board is responsible for architecture and comprehensive land-use planning in the capitol area of St. Paul; exercises zoning and design control authority; controls redevelopment of the north capitol area. Four members appointed by the Governor; members must file with EPB. Monthly meetings at the Capitol; members receive \$35 per diem. For specific information contact the Capitol Area Architectural and Planning Board, 122 Capitol, St. Paul 55155; (612) 296-7138.

## **OFFICIAL NOTICES**

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MINNESOTA ACADEMIC EXCELLENCE FOUNDATION has 1 vacancy open immediately for a business member. The foundation promotes academic excellence in Minnesota public schools through a public-private partnership (a nonprofit organization). Members are appointed by the Governor. For specific information contact the Minnesota Academic Excellence Foundation, 550 Cedar St., Capitol Square Bldg., St. Paul 55101; (612) 296-2414.

### **Department of Energy and Economic Development Community Development Division**

#### **Notice of Availability of Juvenile Justice Grants**

The Minnesota Juvenile Justice Advisory Committee announces the availability of \$673,250 for Juvenile Justice Grants. Funds are available in the following areas:

- Prevention
- Courts
- Pre-Adjudication Alternatives
- Post-Adjudication Alternatives
- Training

Funds will be available from the total award for a mini-grant program in the areas of prevention and training to begin October 1, 1984 and end September 30, 1985. Mini-Grant applications in the prevention area may request up to \$2,000 per application. Mini-Grant applications in the training area may request up to \$1,000 per application. Mini-Grant applications will be accepted on a one-time only basis.

The balance of the award will be available for projects that meet the requirements stated in the Multi-Year Action Plan. The projects must begin by October 1, 1984, but applicants may request funds for up to fifteen months. The fifteen-month cycle would provide Grantees an opportunity to be included in the local budget process.

Applications for the regular grant and mini-grant programs must be received no later than April 20, 1984. Please indicate whether you are interested in the regular grant program or the mini-grant program when requesting application materials.

The Juvenile Justice Advisory Committee will award the grants on June 22, 1984 for an October 1, 1984 start-up date.

Application forms, the Multi-Year Action Plan and other program information can be obtained by contacting:

Steve Gustafson  
Justice Grant Program  
Community Development Division  
940 American Center Building  
150 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
(612) 296-8243

### **Department of Finance**

#### **Notice of Maximum Interest Rate for Municipal Obligations**

Pursuant to Laws of Minnesota 1982, Chapter 523, Commissioner of Finance, Gordon M. Donhowe, announced today that the maximum interest rate for municipal obligations in the month of February will be eleven (11) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to twelve (12) percent per annum.

For further information contact:

Peter Sausen, Director  
Debt Management  
State of Minnesota  
Department of Finance  
(612) 296-8372

## **Housing Finance Agency Home Improvement Division**

### **Notice of Funding Availability for Residential Rental Energy Conservation**

As announced by the Minnesota Housing Finance Agency in the *State Register* dated September 26, 1983, funds have been received from the Solar Energy and Energy Conservation Bank of the U.S. Dept. of Housing and Urban Development for the purpose of upgrading the energy efficiency of rental residential property, and are available in those communities participating in implementing the Rental Subsidy Program. In addition to those previously announced, the following communities and lenders are participating in implementing this program:

Community: Minneapolis

Lenders: Union Bank and Trust Co.  
312 Central Avenue  
Minneapolis, MN 55414  
(612) 379-3222

Northeast State Bank of Minneapolis  
77 N.E. Broadway Avenue  
Minneapolis, MN 55413  
(612) 379-8811

Additional communities participating in implementing the program will be identified in future Notices. For more information on the Program, contact:

Diane Sprague  
Minnesota Housing Finance Agency  
333 Sibley Street, Suite 200  
St. Paul, MN 55101  
(612) 296-7615

## **Minnesota State Retirement System**

### **Regular Meeting, Board of Directors**

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, February 24, 1984, at 8:30 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

## **Department of Public Welfare Health Care Programs Division**

### **Drug Formulary; Notice of Public Meeting**

The Department of Public Welfare (DPW) and the Drug Formulary Committee announce a Public Meeting to hear comments on the proposed DPW Drug Formulary. The meeting will be held on Tuesday, March 20, 1984, from 1:00 p.m.-5:00 p.m. at the Holiday Inn Capitol, 161 St. Anthony Avenue, St. Paul, MN.

The proposed Drug Formulary will be mailed to a select number of Health Professional Associations, Health Care Providers and other health-related Agencies. Other interested parties who wish to receive more information on the formulary or on the meeting may contact:

Dr. Tom Kellenberger  
Health Care Programs Division  
Space Center  
444 Lafayette Road  
St. Paul, Minnesota 55101  
Phone: (612) 297-2388

## OFFICIAL NOTICES

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### Department of Revenue Property Equalization Division

#### Outside Opinion Sought Regarding Proposed Rules Governing the Valuation and Assessment of Railroads

Notice is hereby given that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to promulgate revised rules governing The Valuation of Railroads. The promulgation of these rules is authorized by Minnesota Statutes section 270.81, which requires the agency to adopt rules governing the taxation and assessment of railroad company property.

The State Department of Revenue requests information and comments concerning the specific subject matter of these revised rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statement should be addressed to:

Wayne Gerwing  
Property Equalization Division  
Minnesota Department of Revenue  
Centennial Office Building  
St. Paul, Minnesota 55145

Oral statements will be received during regular business hours over the telephone at 612-296-5144 and in person at the above address.

All statements of information and comment shall be accepted until April 1, 1984. Any written material received by the State Department of Revenue shall become part of the record in the event that the rules are promulgated.

February 1, 1984

Lyle H. Ask, Director  
Property Equalization Div.

## STATE CONTRACTS

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Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers at the indicated phone numbers as soon as possible. If the specific buyer is not available, contact Barbara Jolly or Harvey Leach at 296-3779.

### Department of Administration Procurement Division

#### Commodities Contracts Currently Open for Bidding

| <u>Item</u>                                       | <u>Ordering Division</u> | <u>Delivery Point</u> | <u>Contact Person</u>   |
|---|--------------------------|-----------------------|-------------------------|
| New electric shavers, parts & labor<br>for repair | various                  | various               | Harvey/Barb<br>296-2779 |
| Specialty gases                                   | various                  | various               | Don 296-3777            |
| Rubbish disposal contract                         | Military Affairs         | Duluth MN             | Jim 296-3778            |

| <u>Item</u>                                   | <u>Ordering Division</u> | <u>Delivery Point</u> | <u>Contact Person</u> |
|---|--------------------------|-----------------------|-----------------------|
| Lease of photocopy machine                    | Public Welfare           | St. Paul DPW          | Doug 296-3775         |
| First aid bags                                | Public Safety            | St. Paul DPS          | Donnalee 296-3776     |
| First aid kits & supplies                     | various                  | various               | Donnalee 296-3776     |
| Microfiche readers                            | various                  | various               | Doug 296-3775         |
| Tools, Ind. wrenches, sockets, etc.           | various                  | various               | Marilyn 296-6152      |
| Telephone answering equipment                 | various                  | various               | Don 296-3777          |
| Lease of weather radar system                 | Transportation           | N. St. Paul           | Don 296-3777          |
| Straighten light poles & install<br>new bases | various                  | various               | Harvey 296-2779       |
| Duplicating fluid                             | Central Stores           | St. Paul office       | Harvey 296-2779       |
| Filter elements (air, fuel & oil)             | various                  | various               | Harvey 296-2779       |
| Handicraft & occupational supplies            | various                  | various               | Harvey 296-2779       |
| Trucks  | various                  | various               | Dale 296-3773         |

**Department of Administration  
Intergovernmental Information Systems Advisory Council (IISAC)**

**Request for Proposals for the Development of a Municipal Liquor Store Inventory  
Control and Sales Information System to Operate on a Microcomputer**

The IISAC, in conjunction with a grant awarded to the Arrowhead Regional Development Commission (ARDC), is assisting with the issuance of a Request for Proposal (RFP) which delineates the requirements for the Liquor Store System. The purpose of the system is to provide an automated capability to small municipal liquor stores in their day-to-day operations, affording them better management and control information. The system contemplates the use of an intelligent cash register along with a microcomputer. The microcomputer will access the cash register's memories via telecommunications to obtain the daily transaction activity. The system will subsequently generate a host of reports based on the reported transactions.

The deadline for receipt of submitted proposals is March 9, 1984. The maximum amount of funds available for this effort is \$24,000.00.

The RFP can be obtained from Jake Peters at the ARDC (218-722-5545). If you have any general questions concerning this effort you may contact Jake or Roger Sell, Executive Director of IISAC at 612-297-2172.

**Governor's Planning Council on Developmental Disabilities  
Developmental Disabilities Program**

**Request for Proposals for Improving Day Program Services to Developmentally  
Disabled Persons**

THE GOVERNOR'S COUNCIL announces that it is seeking proposals from eligible public or private nonprofit organizations with the interest and capacity to undertake projects which will improve the quantity and quality of day programs serving developmentally disabled persons. Approximately \$425,000 will be available for grants. The applicant will be required to provide at least 25 percent of the total project costs. Eligible applicants include: units of local government or combinations thereof, regional development commissions, the Metropolitan Council, institutions of higher education (area vocational technical institutes, community colleges, state universities, the University of Minnesota), and nonprofit organizations. Applicants are encouraged to involve the private sector in the applications and those applications which include a public/private partnership will be given priority. Applications are due before 5:00 p.m. on Friday, April 27, 1984. For additional information and for a copy of the guidelines, please write or call:

Ronald E. Kaliszewski  
Developmental Disabilities Program  
201 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101  
Phone: (612) 297-3207

## STATE CONTRACTS

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### Metropolitan Council

#### Request for Sealed Bids for Specifications—Computer Room HVAC

The computer room environmental control system shall be a Liebert self-contained factory assembled unit with up-flow air delivery with front return. The system shall have a total cooling capacity of 107,000BTU/-HR, a sensible cooling capacity of 107,000BTU/HR based on an entering air temperature of 72 F dry bulb and 60 F wet bulb. The unit is to be supplied with 230 volt, 3 PH, 60 HZ electrical service. The system is Liebert Model No. UH 125A. This includes on site inspection.

The Metropolitan Council is accepting bids for Specifications—Computer Room HVAC. Detailed specifications may be obtained by contacting Jerry Schmidt at 291-6568 or Roy Larson at 291-6480.

Sealed bids must be received no later than 4:00 p.m. February 15, 1984.

Please address your sealed bid as follows:

Metropolitan Council  
ATTN: Dick Savage, Purchasing Officer  
The Office of Purchasing  
300 Metro Square Building  
7th and Robert Streets  
St. Paul, Minnesota 55101

Sealed bids will be opened on February 16, 1984 at 10:00 a.m.

The Metropolitan Council reserves the right to refuse any and/or all bids.

Gerald J. Isaacs  
Chair

### Department of Public Welfare Support Services Bureau

#### Request for Proposal for Services as Part of a Rulemaking Project

Notice is hereby given that the Support Services Bureau, Department of Public Welfare, is requesting proposals for services using research, writing and group process skills as an extension to its 1983 rulemaking demonstration project. This project is designed to gain approval of amendments to selected Department rules and to test the effectiveness of utilizing specialized skills on a centralized basis in the development and approval of rules.

The estimated amount of the contract is not to exceed \$27,500.

The guidelines to be used in the preparation of a proposal and a detailed description of the project are available from the Manuals Section, Support Services Bureau, Department of Public Welfare. Deadline for receipt of proposals is 4:30 p.m., March 5, 1984. To obtain a copy of the detailed proposal, write or call:

Robert Hamper  
Department of Public Welfare  
Manuals Section  
4th Floor, Centennial Bldg.  
St. Paul, Minnesota 55155  
(612) 296-2794

### University of Minnesota

#### Request for Proposals for Athletic Facilities Addition, Bierman Field Athletic Building

The University of Minnesota is requesting proposals from qualified contractors, engineers, architects or developers interested in participating in a design/build process to construct an Athletic Facilities Addition to the Bierman Field Athletic Building. This addition will consist of an Enclosed Football Practice Field of approximately 67,000 square feet and office/team facilities of approximately 48,000 square feet. The total construction budget is estimated to be \$4.5 million. A copy of the Request for Proposal (RFP) can be obtained from the office of Mr. Clinton N. Hewitt, Associate Vice President for Physical Planning, University of Minnesota, 340 Morrill Hall, 100 Church Street Southeast, Minneapolis, Minnesota 55455 (373-2250). The RFP will be available Friday, February 10, 1984. Proposal submissions will be received March 12, 1984 at 3:00 p.m. at the office of the University's Director of Purchasing.

# SUPREME COURT

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## Decisions of the Court of Appeals Filed Wednesday, February 1, 1984

Compiled by Wayne O. Tschimperle, Clerk

**CX-83-1512** In the Marriage of Martha Haynes, formerly Martha Ann Krohn, Petitioner-Respondent, and Billy Harland Krohn, Respondent-Appellant. District Court, Murray County.

A child's receipt of social security benefits through a parent's account does not alter that parent's support obligation absent modification of the support order under Minn. Stat. § 518.64 subd. 2.

Affirmed. Popovich, C.J.

**C9-83-1873** Wayne Gerald Fladland and Diane J. Fladland, individually and as parents of Kerrick D. Fladland, a minor child, Plaintiff/Appellants, v. Northway Construction, Inc., Defendant and Third-Party Plaintiff, v. Dwayne Cardinal, d/b/a D.C. General Builders, Third-Party Defendant. District Court, Anoka County.

Because of errors and inconsistencies, this matter is dismissed. Popovich, C.J.

**C9-83-1274** Theodore R. Edin, Respondent, v. Jostens, Inc., Appellant. District Court, Hennepin County.

1. The district court did not err by considering the equities in denying a manufacturing company temporary injunctive relief when it wrongfully terminated its sales representative and then sought a temporary injunction restraining that former sales representative from violating a restrictive covenant in an employment contract.

2. The district court did not err in finding the harm would be greater to the sales representative if a temporary injunction was granted, than to the company if injunction was denied, where the evidence indicates that the company suffered minimally because of the violation of the restrictive covenant, but the sales representative could be forced into bankruptcy if a temporary injunction was granted.

Affirmed. Foley, J.

**C2-83-1312** Harold J. Flahave, Jr., Relator v. Lang Meat Packing, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

When an employee is discharged for failing to notify his employer of his intended absence from work on four occasions in one year, contrary to his employer's policy, his discharge was for misconduct and he is disqualified from receiving unemployment compensation benefits.

Affirmed. Foley, J.

**CX-83-1882** State of Minnesota, Respondent, v. Dennis Gale Chase, Appellant. District Court, Winona County.

Defendant's unamenability to probation justified the trial court's dispositional departure from the sentencing guidelines. The court's durational departure was not justified.

Prior objective failures of probation are not required to prove unamenability to probation. In evaluating amenability, courts may consider all relevant factors not excluded from consideration by the guidelines.

Affirmed in part, reversed in part, remanded. Parker, J.

**C6-83-1460** Christina Meric, Respondent, v. Mid-Century Insurance Co., Appellant. District Court, Ramsey County.

When a driver, while actually using his vehicle, is shot and killed by a robber attempting to commandeer the vehicle for use in his get-away, a sufficient causal connection exists between the use of the vehicle for transportation purposes and the injury to warrant recovery by the driver's widow of basic economic loss benefits under the no-fault act.

Affirmed. Parker, J. Took no part, Sedgwick, J.

**C6-83-1166** Mark A. Hoemberg and Ronald R. Weishalla, Relators, v. Watco Publishers, Inc., Respondent. Department of Economic Security.

1. Employees' actions in leaving the premises without notifying the manager did not constitute such misconduct as to disqualify claimants from unemployment compensation benefits where the employer failed to follow the disciplinary warning provisions of the employees' handbook.

2. There is no evidence to support a holding that the employees knew or should have known their actions would lead to their dismissal.

Reversed. Parker, J.

# **SUPREME COURT**

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**C5-83-1305** In re the Marriage of: Carol Ann Gottenborg, Petitioner-Appellant, and James Isaac Gottenborg, Respondent. District Court, Becker County.

When modifying a child custody arrangement, the trial court must make specific findings that (1) circumstances have changed, (2) a modification is necessary to serve the child's best interests, (3) the child's present environment endangers the child's health or impairs emotional development, and the harm likely in the change is outweighed by the benefits of the change.

Reversed and remanded. Wozniak, J.

**C4-83-1277** In the Matter of the Welfare of D.M.K. District Court, Stearns County.

1. A person is an accomplice within the meaning of Minn. Stat. § 634.04 when that person could have been charged and convicted of the same offense as the defendant.
2. A conviction cannot rest on the uncorroborated testimony of an accomplice. Corroboration evidence must, independent of accomplice testimony, confirm the truth of the accomplice testimony, and point to defendant's guilt in some substantial degree.
3. The testimony of one accomplice cannot be used to corroborate that of another accomplice. However, when the witness' offense consists of receiving stolen property rather than felonious theft, the witness is not an accomplice to felonious theft.

Affirmed. Lansing, J.

## **Decisions of the Supreme Court Filed Friday, February 3, 1984**

**Compiled by Wayne O. Tschimperle, Clerk**

**C2-83-225** State of Minnesota, Respondent, v. Timothy Cox, Appellant. District Court, Hennepin County.

Ordinarily when a defendant pleads guilty to a lesser offense of a charged offense, the trial court may not base an upward durational departure on evidence indicating that the defendant could have been convicted of the charged offense; in this case, however, a durational departure was nonetheless justified because the record establishes that defendant could have been given a greater sentence than the presumptive sentence for the charged offense if he had been convicted of that offense.

Affirmed. Amdahl, C.J.

**C8-82-1630, C9-82-1667** Raymond H. Egeland, Respondent, v. (C8-82-1630) City of Minneapolis, Self-Insured, Relator, and Raymond H. Egeland, Relator, v. (C9-82-1667) City of Minneapolis, Self-Insured, Respondent. Workers' Compensation Court of Appeals.

1. The findings of fact by the Workers' Compensation Court of Appeals that the stress of being a police officer was a substantial contributing factor in the development of the employee's ulcer condition is not manifestly contrary to the evidence.
2. The legal test of causation under the "personal injury" section of Minn. Stat. § 176.021, subd. 1 (1980) does not include a test of "perceived" as opposed to "actual" reality. Rather, an employee must show objective evidence of having been exposed to extreme or beyond day to day stress and evidence of outward manifestations of distress either subsequent to or contemporaneously with the claimed stress.
3. Mental injury is not compensable under the Minnesota Worker's Compensation Act.

Affirmed. Amdahl, C.J.

**C0-82-1668** Betty A. Zontelli, Respondent, v. Smead Manufacturing, Relator, and Employers of Wausau, Relator. Workers' Compensation Court of Appeals.

The Workers' Compensation Court of Appeals may establish a prospective rule that parties in a workers' compensation proceeding are required to raise the issue of primary liability at the first hearing before a compensation judge or be precluded from raising the issue in a later proceeding.

Reversed and remanded. Peterson, J.

Concurring in part, dissenting in part, Todd, J., Yetka, J., and Wahl, J.

**C8-83-388** Joan L. Cotroneo, Appellant, v. Dr. Frank J. Pilney, Respondent. District Court, Ramsey County.

Under the facts of this case, the trial court erred in not permitting the plaintiff to amend her theory of recovery before trial commenced. The failure to permit the amendment under Rule 16 MRCP resulted in manifest injustice.

Reversed and remanded for trial. Todd, J.



**C3-82-1650** State of Minnesota, Respondent, v. Dale Martin Lohnes, Appellant. District Court, Stevens County.

1. Warrantless entry into the abode of an accused and his subsequent warrantless arrest were justified by exigent circumstances.
2. Seizure of defendant's wet clothing which was in plain view at the time of the arrest was not constitutionally impermissible.
3. Seizure of blood stains from a laundry tub was not constitutionally impermissible.
4. Statement given by defendant following arrest and *Miranda* warnings was admissible in evidence.

Affirmed. Kelley, J.

**C4-83-680** In the Matter of Joanne Kolodrubetz, County of Hennepin, Appellant, v. Joanne Kolodrubetz, Respondent. District Court, Hennepin County.

The case is remanded for findings by the court below as required by Minn. Stat. § 253B.02, subd. 13 and § 253B.09, subd. 1 (1982).

Remanded. Yetka, J.

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**TAX COURT**

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

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**State of Minnesota Tax Court  
County of St. Louis, Regular Division**

**Stanley & Lulu Ewing, Appellants, v. The Commissioner of Revenue, Appellee. Docket No. 3816**

**In the Matter of the Appeal from the Commissioner's Order Dated February 28, 1983, Regarding Individual Income Tax Refund of Appellants for the Calendar Year Ending December 31, 1978**

**Findings of Fact, Conclusions of Law, and Order for Judgement**

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the District Courthouse in the City of Duluth, Minnesota, on October 27, 1983.

Jennifer R. Wellner of Duranske Law Offices appeared on behalf of Appellant.

Amy Eisenstadt, Special Assistant Attorney General, appeared on behalf of Appellee.

Briefs were subsequently filed by the parties.

**SYLLABUS**

The Statute of Limitations for claiming refunds may not be altered by the Court.

**FINDINGS OF FACT**

1. Appellants Stanley and Lulu Ewing were residents of the State of Minnesota in calendar year 1978 and were cash basis calendar year taxpayers.
2. Throughout 1978, Appellants were employed by the Rex Hotel, Inc.
3. In June, 1979, Appellants' employment with Rex Hotel, Inc. was terminated by the new owners of that corporation.
4. Upon leaving their employment in June, 1979, Appellants did take some records with them, but their tax records were missing from the files.
5. Appellants filed a Chapter 7 Bankruptcy Petition on November 13, 1979.

## TAX COURT

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6. In 1981, Appellants sued the owners of Rex Hotel, Inc. asking that Appellants' tax records be turned over to them, but their tax records were missing from the files.
7. Approximately March 9, 1982, Appellants requested copies of their federal income tax returns for years prior to 1978, from their accountant, but those records had been destroyed. The accountant did have those records in 1979.
8. In March, 1982, Appellants requested copies of their federal income tax returns for years prior to 1978 from the Internal Revenue Service (IRS). Copies of these returns were received from the IRS on October 21, 1982.
9. Appellants' 1978 Minnesota Individual Income Tax Return was filed January 26, 1983, claiming a refund of tax withheld in excess of tax due in the amount of \$921.00.
10. Appellants' 1978 Minnesota Individual Income Tax Return was filed more than three and one-half years after it was due.
11. The Commissioner of Revenue denied Appellants' refund claim because it was not filed within the statute of limitations set forth in Minn. Stat. § 290.50.
12. Appellants' 1979, 1980, and 1981 Minnesota income tax returns were also filed on January 26, 1983, and refunds for those years were allowed.
13. Appellants' claim for refund for the tax year 1978 should be denied.

### CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

1. Appellants' claim for refund for the year 1978 was not filed within the time required by Minn. Stat. § 290.50, subd. 1, and the Order of the Commissioner of Revenue dated February 28, 1983, denying the claim for refund is affirmed.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

February 2, 1984

By the Court,  
Carl A. Jensen, Judge  
Minnesota Tax Court

STATE OF MINNESOTA

State Register and Public Documents Division  
117 University Avenue  
St. Paul, Minnesota 55155  
297-3000

**ORDER FORM**

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